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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,567	11/24/2003	Yin-Chun Huang	9585-0440	1877
73552 7590 04/22/2008 Stolowitz Ford Cowger LLP 621 SW Morrison St Suite 600 Portland, OR 97205				
EXAMINER				
PUNNOOSE, ROY M				
ART UNIT		PAPER NUMBER		
2886				
MAIL DATE		DELIVERY MODE		
04/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/718,567

Applicant(s)

HUANG ET AL.

Examiner

Roy M. Punnoose

Art Unit

2886

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 9-26 and 28-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-6, 9-26, 28-45 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed on 01/30/2008 is acknowledged and has been entered into the records. Claims 7-8 have been previously cancelled. The applicant has cancelled claim 27, amended claims 12, 13, 17-21, 23, 25, 31, 33 and 35-38, and has introduced new claims 41-45 in response to the previous office action.
2. After carefully reviewing the claims, the Examiner has determined that the claims are directed to two separate and distinct inventions and therefore is restrictable for reasons stated below. In view of the above, any indication of allowability in any of the previous office action has been withdrawn.

Election/Restrictions

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-6, 9-16 and 31-41 are directed to an apparatus and method comprising a point light source, a photodetector, and a lens positioned on the same side of said point light source and said photodetector, classified in class 356, subclass 445.
 - II. Claims 17-26, 28-30 and 42-45 are directed to an apparatus that focuses light from a light source on to a target with a lens, and detects reflected light from the target with a detector, classified in class 356, subclass 39.
4. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are directed to related products. The related inventions are distinct if:

(1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in

scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants.

See MPEP § 806.05(j). In the instant case, the inventions as claimed have different and distinct structures.

Claims 1-6, 9-16 and 31-41 (Group I) are directed to an apparatus and method comprising a point light source, a photodetector, and a lens positioned on the same side of said point light source and said photodetector. In the claims of Group I, both the light emitted from the light source and directed towards the target and the reflected light from the target and directed towards the detector pass through the same lens. On the other hand, claims 17-26, 28-30 and 42-45 (Group II) are directed to an apparatus that focuses light from a light source on to a target with a lens, and detects reflected light from the target with a detector. In the apparatus of Group II, the reflected light *does not* pass through *any* lens. For the above reason, the inventions of Group I and Group II as claimed have different and distinct structures and are therefore two separate inventions. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.

5. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;

- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either

instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Contact/Status Information

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Roy M. Punnoose** whose telephone number is **571-272-2427**. The examiner can normally be reached on 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Tarifur Chowdhury** can be reached on **571-272-2287**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Roy M. Punnoose/
Primary Patent Examiner
Art Unit 2886